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PERKASA PADU SDN BHD

v.

RAYONG NUING & ORS

B

HIGH COURT SABAH & SARAWAK, MIRI
HAMID SULTAN ABU BACKER JC
[SUIT NO: 22-30-2004 (MR)]
17 JULY 2008

C ***CIVIL PROCEDURE:*** *Injunction - Injunctive relief - Application for - Restraining defendants from prosecuting suit - Failure to disclose full and frank disclosure of material facts - Whether fatal - Whether relief in nature of declaratory orders could be claimed as of right under s. 41 of the Specific Relief Act 1950 - Whether there was prima facie merit in*
D *plaintiff's suit*

CIVIL PROCEDURE: *Declaration - Declaratory relief - Application for - Failure to disclose full and frank disclosure of material facts - Whether fatal - Whether relief in nature of declaratory orders could be*
E *claimed as of right under s. 41 of the Specific Relief Act 1950 - Whether there was prima facie merit in plaintiff's suit*

The plaintiffs herein were at all material times engaged in the supply of manpower to oil and gas companies worldwide. The first defendant was employed by the plaintiffs to work as a stalking
F machine operator with STOLT Inc, a company registered in the Bahamas. According to the plaintiffs, the first defendant had induced the plaintiffs to employ him and to enter into an employment agreement by making false representations that he was never awarded benefits from industrial injury or illness. However,
G it was discovered that the first defendant was a crew member of a construction Barge DB29 which capsized near China in 1991 and that as a result of the said accident, the first defendant developed a post traumatic stress disorder and became an alcoholic. Further, the first defendant had filed a personal injury
H suit arising from the said accident in the Louisiana District Court and was awarded, paid and received (an out of court settlement) a substantial sum of US$220,000. It was the plaintiffs' claim that had the first defendant disclosed that he had received benefits from industrial injury or illness, the plaintiffs would not have
I employed him and entered into an employment agreement with

him. The plaintiffs claimed they were entitled to, *inter alia* (i) a declaration that the employment agreement was null and void; (ii) an injunction against the defendants to restrain them from prosecuting their USA suit and/or further to instruct their attorneys in the USA in proceeding with or continue to prosecute their USA suit and (iii) a declaration that the plaintiffs were entitled to be fully entitled to be indemnified by the defendants against all claims and sums as may be ordered or awarded in the United States of America District Court at Galveston Country, State of Texas ('the US suit'). It was the plaintiffs' submission that s. 41 of the Specific Relief Act 1950 was a provision that conferred a right to the plaintiffs to seek a declaration. It was also submitted by the plaintiffs' that the court should exercise its discretion because there was a real or pending threat to the plaintiffs' legal right as clearly shown by the defendants' own bundle of documents as the first defendant had instituted a negligence suit in USA against his employer namely Perkasa Padu Sdn Bhd in respect of injuries allegedly sustained by the first defendant in the course of his work on board a maritime vessel DLB8O1.The defendants however argued that there was no evidence adduced by the plaintiffs to show that there was an employment agreement made between the plaintiffs and the first defendant and that the non-production of the employment agreement was fatal. The defendants' defence was that the plaintiffs' claim was frivolous, vexatious, oppressive, constituted an abuse of the process of the court and ought to be dismissed.

Held (dismissing plaintiffs' suit with costs):

(1) Notwithstanding the fact the plaintiffs said that there was an employment contract with the first defendant, the employment contract was not produced, neither was there any evidence of the terms of the employment in the usual form within the framework of labour law or industrial jurisprudence. Nothing was also pleaded in the statement of claim. The plaintiffs were seeking declaratory reliefs and injunction which in essence required full and frank disclosure of all material facts to the satisfaction of the court before the remedies could be advanced. This the plaintiffs had failed to do. (para 5)

(2) This court disagreed with the plaintiffs' proposition that the relief in the nature of declaratory orders could be claimed as of right under s. 41 of SRA 1950. Reliefs in the nature of declaration and/or injunctive orders were discretionary in

nature and to secure such relief, full and frank disclosure was necessary and essential. The plaintiffs were not seeking a substantial remedy in this court. The whole purpose of the said declaratory order and/or injunctive order was for a collateral purpose that too, to defeat or to defend an action in a foreign jurisdiction. On such facts, court would be reluctant to exercise its discretion when it was seen to be a case of multiplicity of proceedings and/or collateral purpose. (para 14)

(3) *Prima facie*, there was no merit in the plaintiffs' suit and evidence seeking declaratory/and or injunctive relief, in law and/or on the facts. More so, when the plaintiffs had not shown any employment contract or continuous payment of salary or compliance of employment law or industrial law etc, or employment contract under the Marine Insurance Act in relation to sea men or sea farers. The plaintiffs have not made out a *prima facie* case for the reliefs sought for in law as adumbrated in the case of *Sabu Development Sdn Bhd v. Kelik Bayel*. (para 14)

Case(s) referred to:

Airbus Industries GIE v. Patel & Ors [1998] 2 All ER 257 ***(refd)***

Amchem Products Inc v. British Columbia [1993] 1 SCR 897 ***(refd)***

Bata Shoe Company (Malaya) Ltd v. Employees Provident Fund Board [1966] 1 LNS 18 HC ***(refd)***

British Airways Board v. Laker Airways Ltd & Ors [1985] 1 AC 58 ***(refd)***

Dato' Menteri Othman Baginda & Anor v. Dato Ombi Syed Alwi Syed Idrus [1984] 1 CLJ 28; [1984] 1 CLJ (Rep) 98 ***(refd)***

Datuk Syed Kechik Syed Mohamed v. Government of Malaysia & Anor [1978] 1 LNS 44 ***(refd)***

Donohue v. Armco Inc & Ors [2002] 1 All ER 97 ***(refd)***

Douglas A Pedley v. Majlis Ugama Islam Pulau Pinang & Anor [1990] 2 CLJ 391; [1990] 2 CLJ (Rep) 24 HC ***(refd)***

Ng Ben Thong & Anor v. Krishnam Arumugam [1997] 1 LNS 85 HC ***(refd)***

NVJ Menon v. The Great Eastern Life Assurance Company Ltd [2004] 3 CLJ 96 CA ***(refd)***

Ontario Ltd v. Sagaz Industries Canada Inc [2001] 2 SCR 983 ***(refd)***

Sabu Development Sdn Bhd v. Kelik Bayel [2007] 9 CLJ 475 HC ***(refd)***

Societe Nationale Indusrielle Aerospatiale v. Lee Kui Jak & Ors [1987] 1 LNS 46 PC ***(refd)***

Shen Yuan Pai v. Dato Wee Hood Teck & Ors [1974] 1 LNS 153 HC ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 11
Specific Relief Act 1950, s. 41

For the plaintiffs - Anthony Tai (Muhammad Suhaili with him); M/s Suhaili & Bong
For the defendants - William Chang Kok Liam (Shankar RP Asnani & Keith Chin with him; M/s Thomas, Shankar Ram & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Hamid Sultan Abu Backer JC:

[1] This is my judgment in respect of the plaintiffs' claim for declarations and injunctive relief (anti-suit injunction) against the defendants to restrain them from prosecuting their USA suit and/or further to instruct their attorneys in the USA in proceedings with or continue to prosecute their USA suit. There are also prayers for general and special damages, interests, costs etc. The claim of the plaintiffs are primarily based on an allegation of employment contract which the defendants' dispute.

[2] At the commencement of the hearing, parties have agreed that the case can be heard by way of: (i) witness statement for examination in chief; (ii) preliminary cross-examination witness statement, with full liberty to further cross-examine orally (for purposes of cross-examination); (iii) preliminary re-examination statement with full liberty to further re-examination if there is further oral examination. The court is extremely grateful to the parties for agreeing to such a mode as the preliminary cross-examination witness statement will save much of the court's time to deal with peripheral matters and for all practical purposes, preliminary cross-examination witness statement will stand as interrogatories and answers thereto only, as the right of oral cross-examination to the litigant is preserved during the whole trial.

Brief Facts (Plaintiffs' Version)

[3] The plaintiffs say:(i) the plaintiffs were at all material times engaged in the supply of manpower to oil and gas companies worldwide. The 1st defendant was employed by the plaintiffs to work as a stalking machine operator with STOLT Inc., a company

registered at Bahamas, such work to be carried out at the Gulf of Mexico;(ii) the 1st defendant had induced the plaintiffs to employ him and to enter into an employment agreement dated the 20th day of April 2001 by making the following representations: (a) that the 1st defendant was never awarded benefits from industrial injury or illness, (b) that he was never treated for depression, (c) that he was never treated as an alcoholic,(iii) the aforesaid representation was false in that: (a) the 1st defendant was a crew member of a construction Barge DB29 which capsized near China in 1991, (b) that as result of the said accident, the 1st defendant developed a post traumatic stress disorder and became an alcoholic, (c) that the 1st defendant had filed a personal injury suit arising from the said accident in Civil Action No. 91-3016 in the Eastern District of Louisiana District Court, (d) that the 1st defendant was awarded, paid and received (an out of court settlement) in civil action No. 91-3016 a substantial sum of US$220,000; (iv) had the 1st defendant disclosed that he had received benefits from industrial injury or illness, the plaintiffs would not have employed him and entered into an employment agreement with him.

The plaintiffs say as per their original statement of claim that they are entitled *inter alia* as prayed for:

(i) a declaration that the Employment Agreement is null and void.

(ii) an injunction against the defendants whether by themselves, their servants agents or otherwise howsoever called be restrained from prosecuting their US Suit and/or to further instruct their Attorneys in the United States of America in proceeding with or continuing to prosecute the US Suit;

(iii) a declaration that the plaintiffs are entitled to be fully entitled to be indemnified by the defendants against all claims and sums as may be ordered or awarded in the United States of America District Court at Galveston Country, State of Texas in Cause No. 03 CV0576 10th (for brevity "the US Suit");

(iv) special damages in the sum of RM302,600.

(v) general damages to be assessed;

(vi) interest thereon at 8% p.a., pursuant to s. 11 Civil Law Act 1956 (Act 67) from, the date of summons until judgment and thereafter at 8% p.a. until full settlement;

(vii) costs;

(vii) such further or other reliefs as this Honourable Court deems fit and just.

[4] The defendants say: (i) that there was no evidence adduced by the plaintiffs to show that there was an employment, agreement made between the plaintiffs and the 1st defendant dated 20 August 2001; (ii) the 1st defendant was at all material time an employee of Stolt Offshore Inc., a company registered at Bahamas to work in the Gulf of Mexico; (iii) the 1st defendant at all material time before the accident on Derrick Lay Barge DL 801 on 15 May 2001 was a physically and mentally fit person to work as a rigger.

In brief the defendants' defence is that the plaintiffs' claim is frivolous, vexatious, oppressive and constitutes an abuse of the process of the court and ought to be dismissed with costs.

Preliminaries

[5] Two witnesses gave evidence on behalf of the plaintiffs. The 1st defendant did not give evidence on the ground that he is not medically fit and presently seeking treatment in USA. Notwithstanding the fact the plaintiffs say that there was an employment contract with the 1st defendant, the employment contract was not produced, neither was there any evidence of the terms of the employment in the usual form within the framework of labour law or Industrial jurisprudence. Nothing was also pleaded in the statement of claim. The plaintiffs also failed to answer more than 20 cross examination questions, which I think is relevant to the case and the defendants are entitled to ask them in cross-examination and the plaintiffs are obliged to answer the same, taking into consideration that the plaintiffs are seeking declaratory reliefs and injunction which in essence requires full and frank disclosure of all material facts to the satisfaction of the court before the remedies can be advanced. This at the outset, I will say the plaintiffs had failed to do.

[6] There were some amendments to the plaintiffs' statement of claim which I need not set out here. The statement of claim in the original form *inter alia* reads as follows:

> At all material time, the Plaintiff is engaged in manpower supply to oil and Gas companies worldwide.
>
> At all material time, the 2nd and 3rd defendants are respectively the mother and father of the 1st defendant.
>
> By an agreement made on the 20th April 2001, the plaintiff agreed to employ the 1st defendant as a Stalking Machine Operator with Stolt Offshore, Inc., a company registered at Bahamas, such work to be carried out at the Gulf of Mexico.
>
> In order to induce the Plaintiff into entering the Employment Agreement with the 1st defendant, the 1st defendant represented to the Plaintiff, amongst others, the following matters,
>
> (i) that he had not been rejected for employment for medical reasons;
>
> (ii) that he had not been awarded any be benefit for industrial injury/illness;
>
> (iii) That he had not been treated for a mental condition, eg, depression;
>
> …

Plaintiffs' Argument

[7] Learned counsel for the plaintiffs in the 1st submission without going too much through the evidence has meticulously and fairly set out the plaintiffs' argument. In contrast, the defendants have submitted in length, short of a thesis. However, the learned counsel for the defendants, have dealt with a number of relevant issues and law which was material for writing this judgment.

[8] The plaintiffs say that s. 41 of Specific Relief Act 1950 is a provision that confers a right to the plaintiffs to seek a declaration, and asserts that it is a provision that confers a right. They say that so long as it is made for a purpose and not just as a busybody seeking a declaration, the court has full discretion. The plaintiffs' assert that a declaration may be awarded to one whose legal right on the defendants are already being threatened. The

plaintiffs in all fairness concedes that a declaration will not be granted if plaintiff have an alternative remedy. The plaintiffs say in the circumstances of the case, the court should exercise its discretion for the following reasons: (i) that the plaintiffs have no alterative remedy, (ii) that the legal right involved is not academic or hypothetical, (iii) the declaration sought for is not to his future right but rather to his present right. (iv) there is a real or pending threat to the plaintiffs' legal right as clearly shown by the defendants' own bundle of document. The 1st defendant and his parents had instituted a negligence suit in USA against his employer namely Perkasa Padu Sdn. Bhd in respect of injuries allegedly sustained by Rayong ak Nuing in the course of his work on board a maritime vessel DLB8O1. This threat has never been denied and has not been withdrawn and says (i) even as to declaration of future right its importance for certain purpose is not in doubt particularly where declaration is usually the only remedy, (ii) a declaration order will eliminate anxiety of having to live under a cloud of fear.

[9] The plaintiffs rely on the following cases namely: (i) *Douglas A. Pedley v. Majlis Ugama Islam Pulau Pinang & Anor* [1990] 2 CLJ 391; [1990] 2 CLJ (Rep) 24, (ii) *Datuk Syed Kechik bin Syed Mohamed v. Government of Malaysia & Anor* [1978] 1 LNS 44, (iii) *Dato' Menteri Othman Baginda & Anor v. Dato' Ombi Syed Alwi bin Syed Idrus* [1984] 1 CLJ 28; [1984] 1 CLJ (Rep) 98, (iv) *Ng Ben Thong & Anor v. Krishnam a/l Arumugam* [1997] 1 LNS 85.

Defendants' Argument

[10] The defendants say the non-production of employment agreement between the plaintiffs and the 1st defendant is fatal. And among others, the defendants rely on the following cases namely:

(a) *Bata Shoe Company (Malaya) Ltd. v. Employees Provident Fund Board* [1966] 1 LNS 18 where the court stated:

> Whether or not a particular contract is a contract of service is a question of fact, depending upon the terms of the engagement, the method of remuneration, and the power of controlling and dismissing the workmen, although none of these factors is by itself conclusive.

(b) The Supreme Court case of *Canada in Ontario Ltd. v. Sagaz Industries Canada Inc.* [2001] 2 SCR 983 where the court held:

A There is no one conclusive test which can be universally applied to determine whether a person is an employee or an independent contractor. What must always occur is a search for the total relationship of the parties. The central question is whether the person who has been engaged to perform the
B services is performing them as a person in business on his own account. In making this determination, the level of control the employer has over the worker's activities will always be a factor.

(c) *NVJ Menon v. The Great Eastern Life Assurance Company Ltd.*
C [2004] 3 CLJ 96 where the court held:

This is because the construction of a contract was a question of law for determination by the court and not by witnesses through their oral evidence. …

D .....Their views are entirely irrelevant; as irrelevant as the views of the witnesses who gave their interpretation of the financial orders in Reynolds.

In the instant case, the learned judge referred to the oral testimony and relied upon it for the interpretation of the
E agreements and circulars. That, in our view is clearly an inadmissible method of construction.

[11] The defendants assert that this is one of the rare cases in Malaysia where plaintiffs had sought for anti-suit injunction and
F declaration to restrain the defendants from prosecuting the US suit and against a 3rd party. They say that the Malaysian courts have no interest or connection at all with the claims of the USA suit, and further the plaintiffs had not shown why the Malaysian courts should disregard the concept of judicial comity and interfere
G with the US Suit, when it also concerns claims against 3rd parties.

[12] In support of the above arguments the defendants rely on the following cases namely:

(a) *Societe Nationale Industrielle Aerospatiale v. Lee Kui Jak & Ors*
H [1987] 1 LNS 46 where it was stated:

In the opinion of their Lordships, in a case such as the present where a remedy for a particular wrong is available both in the English (or, as here, the Brunei) court and in a foreign court, the English (or Brunei) court will, generally speaking,
I only restrain the plaintiff from pursuing proceedings in the foreign court if such pursuit would be vexatious or oppressive.

So, as a general rule, the court will not grant an injunction if, by doing so, it will deprive the plaintiff of advantages in the foreign forum of which it would be unjust to deprive him.

(b) *Airbus Industries GIE v. Patel & Ors* [1998] 2 All ER 257 where it was held:

As a general rule, before an anti-suit injunction could be granted by an English court to restrain a person from pursuing proceedings in a foreign jurisdiction, comity required that the English forum should have sufficient interest in, or connection with, the matter in question to justify the indirect interference with the foreign court which such an injunction entailed.

... Since, in the instant case, the English court had no interest in, or connection with, the matter in question, and the defendants had not appealed from the judge's decision not to enforce the judgment of the Indian court, but were relying simply on the English court's power to grant an injunction, the court could not grant the injunction sought because it would be inconsistent with the principles of comity.

At Page 8:

It requires that the court should have regard to comity, and should only grant an anti-suit injunction to protect its own jurisdiction or to prevent evasion of its public policies: see eg. *China Trade and Development Corp v. MV Choong Yong* [1987] 837 F 2d 33 ...

On this approach, an anti-suit injunction will be granted if the foreign proceedings are vexatious, oppressive or will otherwise cause inequitable hardship. In deciding whether to grant an injunction, the court will take into account the effect on a foreign sovereign's jurisdiction as one factor relevant to the grant of relief (see *Philips Medical Systems International BV v. Bruetman* [1993] 8 F 3d 600 at 605 per Judge Posner), but will require evidence that comity is likely to be impaired (see *Allendale Mutual Insurance v. Bull Data Systems* [1993] 10 F 3d 425 at 431 per Judge Posner).

(c) *Donohue v. Armco Inc. & Ors* [2002] 1 All ER 97 where the court opined:

A However, the court might well decline to grant an injunction or stay where the interests of parties other than parties bound by the exclusive jurisdiction clause were involved or grounds of claim not the subject of the clause were part of the relevant dispute so that there was a risk of parallel proceedings and inconsistent decisions.

B

(d) *Amchem Products Inc. v. British Columbia* [1993] 1 SCR 897 (Supreme Court of Canada) where it was stated:

At Page 5:

C A court should entertain an application for an anti-suit injunction only where a serious injustice will occur because of the failure of a foreign court to decline jurisdiction applying the forum non-convenience test.

D Consonant with the principles of comity, the decision of the foreign court should not be pre-empted until a proceedings has been launched in that court and the applicant for an injunction in the domestic court has sought from the foreign court a stay or other termination of the foreign proceedings and failed.

E At Page 7:

The court will not generally grant an injunction if it will unjustly deprive the plaintiff of advantages in the foreign forum, having regard to the extent that the party and the facts are connected to it. A party can have no reasonable expectation of F advantages available in a jurisdiction with which the party and the subject matter of the litigation has little or no connection.

At Page 41:

In order to resort to this special remedy consonant with G principles of comity, it is preferable that the decision of the foreign court not be pre-empted until a proceeding has been launched in that court and the applicant for an injunction in the domestic court has sought from the foreign court a stay or other termination of the foreign proceedings but failed.

H At Page 42 to 43:

The first step in applying the SNI analysis is to determine whether the domestic forum is the natural forum, that is, the forum that on the basis of relevant factors has the closest connection with the action and the parties. I would modify this I slightly to conform with the test relating to forum non

convenience. Under this test the court must determine whether there is another forum that is clearly more appropriate. The result of this change in stay applications is that where there is no one forum that is the more appropriate forum, the domestic forum wins out by default and refuses a stay, provided it is an appropriate forum. In this step of the analysis, the domestic court as a matter of comity must take cognizance of the fact that the foreign court has assumed jurisdiction. If, applying the principles relating to forum non convenience outlined above, the foreign court could reasonably have concluded that there was no alternative forum that was clearly more appropriate, the domestic court should respect that decision and the application should be dismissed.

(e) *British Airways Board v. Laker Airways Ltd. & Others* [1985] 1 AC 58 (House of Lords) where the court declared:

> … allowing Laker's appeals in B.A.'s and B.C's actions, that, since the allegations in Laker's complaint against B.A and B.C in the American action disclosed no cause of action justiciable in an English court, the case was one where there was a single forum only of competent jurisdiction to determine the merits of Laker's claim, that forum being a foreign court, and in such a case to enjoin Laker from having access to that court would prevent their claim altogether from being decided on the merits in their favours that in those circumstances it was necessary for B.A and B.C to show that they were entitled under English Law to a legal or equitable right not to be sued in the American action and the question accordingly was whether it would be unconscionable, and thus unjust, on the part of Laker to sue them in that action; and that, on the facts, the plaintiffs, who had accepted when becoming parties to Bermuda 2 that they were subject to the private law of both countries, had failed to make out a case of unconscionable conduct on Laker's part.

[13] The defendants say that the court should invoke adverse presumption on the plaintiff's failure to produce the employment agreement in writing and rely on the case of *Shen Yuan Pai v. Dato Wee Hood Teck & Ors* [1974] 1 LNS 153 where it was held:

> On Page 1004 of *Sarkar on Evidence*, 12th Edition, the following passage occurs under the caption of "presumption from not calling witnesses acquainted with facts and keeping the adversary out of possession of Evidence:

> Everything is to be presumed against a party who keeps his adversary out of possession of evidence by taking means of retaining the evidence in his own custody. A similar presumption may also arise when a party does not call witnesses who are within reach and are acquainted with the facts of the case ...

[14] I have heard the evidence, read the documents and submissions of the parties in detail. I take the view that the plaintiffs' suit must be dismissed. My reasons are as follows:

(i) I disagree with the plaintiffs' proposition that the relief in the nature of declaratory orders can be claimed as of right under s. 41 of SRA 1950. Reliefs in the nature of declaration and/or injunctive orders are discretionary in nature and to secure such relief, full and frank disclosure is necessary and essential. I have dealt with this area of law in detail in the case of *Sabu Development Sdn. Bhd. v. Kelik Bayel* [2007] 9 CLJ 475. That part of the judgment reads as follows:

> The plaintiff's reliance on the views of learned author P.W. Young in his book on "Declaratory Order" was not sufficient to satisfy the threshold requirement before the court could exercise to grant the declaratory relief. The very important principle in my judgment which must be adhered to before declaratory relief could be considered was for the plaintiff to ensure that all necessary and interested parties were before the court and only thereafter can the views of P.W. Young become relevant. The matter does not end there. The plaintiff must also satisfy the requirement set out in the Specific Relief Act 1950 (SRA 1950) because the Act specially dealt with declaratory orders and decrees. Section 41 of SRA 1950 read as follows:
>
> > Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in that suit ask for any further relief Provided that no court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration or title, omits to do so.
>
> Section 41 of the said Act must be read with order 15 rules 16 of RHC 1980 which states:

> No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not consequential relief is or could be claimed.

This section and order 15 rule 16 of RHC 1980 is patently in conflict. Similar provision as this section and the said order is found in India. In construing the provisions, the Privy Council in *Kathamar Nachiyar v. Dorasingha* [1875] 21A 169 has held that the courts in India had no power to make a merely declaratory decree otherwise than under the section.

Under this section, there is a need to seek "further relief than mere declaration". (emphasise is mine). This is not a requirement under order 15 rule 16. Declaratory orders cannot be granted when the strict requirement set out in this section is not satisfied. Our courts have endorsed the criteria set out by P.W. Young in his book *"Declaratory Orders"* 2nd edition where he says that the criteria required before there can be declaratory orders are as follows: (a) there must exist a controversy between the parties; (b) the proceedings must involve a "right"; (c) the proceedings must be brought by a person who has a proper or tangible interest in obtaining the order, which usually referred to as "standing" or *"locus standi"*; (d) the controversy must be subject to the court's jurisdiction; (e) the defendant must be a person having a proper or tangible interest in opposing the plaintiffs claims; (f) the issue must be ripe, ie, it must not be of academic interest hypothetical or one whose resolution would be of no practical utility. In the light of section 41 of the Act, the proposition stated by the learned author P.W. Young cannot be read in isolation. Further, it will appear that the literal reading of order 15 rule 16 of RHC 1980 will be *ultra vires* section 41 of SRA 1950.

In my view, pure reliance on English authorities and books now (after 50 years of independence) in almost all cases will not reflect our legislative intention and scope of the relevant Acts. In my view less dependence will pave way for independence in the development of law and legal jurisprudence. This is so because many of our legislative provisions are not applicable in England or other jurisdiction in the commonwealth. It is often unnecessary to rely on authorities when the Act and Rules are extremely clear. The plaintiff need only comply with the basic rules and statutory

provisions to obtain the relevant relief. It is unnecessary as in this case to place heavy reliance on cases when the Act and Rules for declaratory relief are clear and self explanatory, and the discretion to grant the relief is vested in the courts.

For reasons stated above, notwithstanding there are some merits in the plaintiff's submission I take the view that the plaintiff has not satisfied the legal and procedural requirements and has taken much of courts time and on the facts of this case it can be said that the plaintiff's application is frivolous, vexatious and abuse of process of court. To avert such application, I take the view that the solicitors must be asked to bear the costs as in doing so it will stand as a deterrent for filing unmeritorious application and this will also be a step to reduce backlog of cases. It is my judgment that the plaintiff's originating summons must be dismissed with costs to be taxed and paid to the defendant. As the defendant is not before the court but has been served the learned deputy registrar shall send a copy of this judgment to the defendant and inform her that she is entitled to tax the costs. I hereby order so.

(ii) In this case, the plaintiffs are not seeking a substantial remedy in this court. The whole purpose of the said declaratory order and/or injunctive order is for a collateral purpose that too, to defeat or to defend an action in a foreign jurisdiction. On such facts, court will be reluctant to exercise its discretion when it is seen to be a case of multiplicity of proceedings and/or collateral purpose.

(iii) *Prima facie*, I do not find any merit in the plaintiffs' suit and evidence, seeking declaratory and/or injunctive relief, in law and/or on the facts. More so, when the plaintiffs had not shown any employment contract or continuous payment of salary or compliance of employment law or Industrial Law etc, or employment contract under the Marine Insurance Act in relation to sea men or sea farers. I will say that the plaintiffs have not made out a *prima facie* case for the reliefs sought for in law as adumbrated in *Sabu*'s case.

[15] For reasons stated above, I dismiss the plaintiffs' suit with costs to the defendants. The getting up fees shall not exceed RM50,000. If costs cannot be agreed, the defendants are at liberty to tax the costs.

I hereby order so.